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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,692	09/30/2004	Michael J. Hier	MASL-68	5691
37690 7590 01/29/2007 WOOD, HERRON & EVANS, LLP (LEAR) 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER BROWN, DREW J	
			ART UNIT 3616	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/29/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/711,692	Applicant(s) HIER ET AL.	
	Examiner Drew J. Brown	Art Unit 3616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 13 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :9/30/04, 2/3,4/5-2005, 1/3,3/13,3/24,4/27,6/8,6/27,7/19,9/6,10/13,11/13,12/14-2006, 1/3/07.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-9, 13, and 14, drawn to the apparatus and the method of use, classified in class 280, subclass 743.1.
 - II. Claims 10-12, drawn to the method of manufacturing using injection molding cavities and a blowing agent, classified in class 264, subclass 46.4.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, invention II requires injection molding cavities and a blowing agent not required by invention I.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with William Allen on Friday, January 19th, 2007, a provisional election was made without traverse to prosecute the invention drawn to the apparatus and method of use, claims 1-9, 13, and 14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-12 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 4 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
7. Claim 4 recites the limitation "said substantially non-cellular structure" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.
8. Claim 8 recites the limitation "said outer skin" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-3, 5-9, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swann et al. (U.S. Pat. No. 6,213,506 B1) in view of Shah et al. (U.S. Pat. No. 6,669,228 B2).

Swann et al. discloses an airbag cushion capable of being filled by an inflation fluid to restrain an occupant inside a passenger cabin of a vehicle (Abstract), comprising a substrate (40) adapted to be mounted inside the passenger cabin, and a covering (22) on at least a portion of the substrate, wherein the covering includes an elastic outer layer (30) and a core (44) positioned between the outer layer and the substrate, where the core is configured to lose cohesion (the foam material loses its cohesion at least to some degree during expansion) upon receipt of the inflation fluid for defining a space (space created when tube 50 expands) between the outer layer and the substrate, and the space filling with the inflation fluid (column 3, lines 16-23) to cause elastic expansion of the outer layer for defining the airbag cushion (dotted lines in Figure 1). Also, the core includes an opening (42) that defines a pathway for inflation fluid supplied from an inflation fluid source.

Swann et al. discloses the claimed invention as discussed above but does not disclose that the outer layer consists of a polymer material and the core has a cellular structure. However,

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Shah et al. does disclose that the cover is made of a cellular polymer material (column 6, lines 49-60). Shah also discloses that the core is less dense than the outer skin (column 10, lines 57-59). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Swann et al. to form the cover out of a polymer material, and the core out of a cellular material in order for the airbag to have predictable and consistent performance (column 6, line 3).

Swann et al. also discloses that the covering is selected from the group consisting of a thermoplastic elastomer compound and a polyolefin (column 7, lines 31-34), but does not disclose that the substrate includes a material selected from the group consisting of a thermoplastic polymer and a thermoset polymer, or that the polymer material in the outer layer is non-cellular. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made form the substrate out of either a thermoplastic polymer or a thermoset polymer and that the outer layer is non-cellular, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intnded use as a matter of obvious design choice.

With respect to claims 5 and 6, Swann et al. discloses that the covering and the substrate define a unitary molded assembly (Figure 1). However, the functional limitations that the covering and substrate define a unitary molded assembly and the limitations that the substrate is formed by a first shot and covering by a second shot of the molding process are intermediate steps not germane to the issue of patentability of the device itself. Therefore, these functional limitations do not serve to distinguish over the prior art as discussed.

With respect to claims 5 and 6, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, the functional limitation limitations do not serve to distinguish over the prior art, a

With respect to claim 13, the structural limitations as discussed above meet the method claim limitations.

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Allowable Subject Matter

11. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gajewski, Cowelchuk et al., Skelly et al., Weller, and Kowalski disclose similar occupant restraints.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew J. Brown whose telephone number is 571-272-1362. The examiner can normally be reached on Monday-Thursday from 8 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul N. Dickson can be reached on 571-272-6669. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


1/22/02
PAUL N. DICKSON
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Drew J. Brown
Examiner
Art Unit 3616